

APPENDIX C

OPERATING AGREEMENT

DRAFT

AGREEMENT FOR THE OPERATION
OF THE
SUNNYVALE MATERIALS RECOVERY AND
TRANSFER STATION
BETWEEN
THE CITY OF SUNNYVALE
AND

February 2007

TABLE OF CONTENTS

	Page
ARTICLE 1. DEFINITIONS	3
ARTICLE 2. TERM OF AGREEMENT	4
2.01 Effective Date	4
2.02 Term.....	4
2.03 Option to Extend Term	4
2.04 Conditions to Effectiveness of Agreement.....	4
ARTICLE 3. OPERATION OF TRANSFER STATION	6
3.01 Receipt of Municipal Solid Waste and Recyclable Materials	6
3.02 Priority	6
3.03 Days and Hours of Operation	7
3.04 Receipt and Processing of Material from Extended Service Area.....	7
3.05 Material Recovery Operations	8
3.06 Permits.....	12
3.07 Mitigation Measures	13
3.08 Hazardous Waste.....	13
3.09 Equipment	14
3.10 Personnel	16
3.11 Other Operating Procedures and Standards	17
3.12 Turnaround Time of Waste Collection Vehicles	17
3.13 Weighing	18
3.14 Collection of Public Use Fees	18
3.15 Cooperation Regarding Clean Up Campaign and Special Events.....	19
3.16 Marketing of Recyclable Materials	19
3.17 City's Right to Cure Defaults	22
3.18 City Use of Offices/Visitor Center	22
3.19 Source-Separated Recyclables Composition Survey	23
3.20 Cost Allocation Reports	23
3.21 Modifications to MSW Processing Line.....	24
ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET	25
4.01 Transportation	25
4.02 Parking and Maintenance of Transfer Vehicles	26

TABLE OF CONTENTS

(continued)

Page

ARTICLE 5.	COMPENSATION TO CONTRACTOR.....	27
5.01	General	27
5.02	Basic Annual Payment	27
5.03	Tipping Fee for Excess Tonnage.....	28
5.04	Gate Fees for Publicly Hauled Waste	29
5.05	Reimbursement of Certain Costs	29
5.06	Contractor's Share of Recycling Revenues	30
ARTICLE 6.	PAYMENT AND REVENUE SHARING PROCEDURES.....	31
6.01	Basic Annual Payment	31
6.02	Tipping Fee for Excess Tonnage.....	31
6.03	Publicly Hauled Waste.....	31
6.04	Cost Reimbursements	31
6.05	Revenues Received from Sale of Recyclable Materials	31
6.06	Monthly Contractor's Statement.....	32
6.07	Adjustments to, and Annual Reconciliation of, Revenues from Sale of Recyclables	33
6.08	Host Fee Reports	34
ARTICLE 7.	INDEMNITY, INSURANCE, BOND.....	35
7.01	Indemnification	35
7.02	Insurance	35
7.03	Faithful Performance Bond.....	40
7.04	Alternative Security	41
7.05	Hazardous Waste Indemnification	41
7.06	Integrated Waste Management Act Indemnification	42
ARTICLE 8.	REPRESENTATIONS AND WARRANTIES OF CONTRACTOR.....	43
8.01	Corporate Status	43
8.02	Corporate Authorization	43
8.03	Statements and Information in Proposal.....	43
8.04	No Conflict with Applicable Law or Other Documents.....	43
8.05	No Litigation	43
8.06	Financial Condition	44
8.07	Expertise	44

TABLE OF CONTENTS

(continued)

	Page
ARTICLE 9. DEFAULT AND REMEDIES	45
9.01 Events of Default.....	45
9.02 Right to Suspend or Terminate Upon Default	46
9.03 Specific Performance	47
9.04 Right to Perform	47
9.05 City's Remedies Cumulative	47
9.06 Liquidated Damages	48
9.07 City Default	49
9.08 City's Right to Cure	50
9.09 Use of Property Upon Default	50
9.10 Damages	51
ARTICLE 10. OTHER AGREEMENTS OF THE PARTIES.....	52
10.01 Relationship of Parties.....	52
10.02 Compliance with Law	52
10.03 Governing Law.....	52
10.04 Jurisdiction	52
10.05 Assignment	52
10.06 Subcontracting.....	54
10.07 Binding on Successors	54
10.08 Parties in Interest	54
10.09 Waiver	55
10.10 Contractor's Investigation; No Warranties by City.....	55
10.11 Condemnation.....	55
10.12 Notice	56
10.13 Representatives of the Parties.....	56
10.14 Duty of Contractor Not to Discriminate	57
10.15 City Environmental Policies	57
10.16 Right to Enter and Inspect Station	57
10.17 Recycling Programs Not Restricted	57
10.18 Maintenance and Review of Records, Submission of Reports	58
10.19 Right to Demand Assurances of Performance	58
10.20 Right of City to Make Changes.....	59

TABLE OF CONTENTS

(continued)

	Page
10.21 Force Majeure.....	60
10.22 Cooperation During Transition	61
10.23 Guaranty.....	61
10.24 Reports as Public Records	61
ARTICLE 11. MISCELLANEOUS AGREEMENTS	62
11.01 Exhibits.....	62
11.02 Entire Agreement.....	62
11.03 Section Headings.....	62
11.04 Interpretation	62
11.05 Amendment.....	62
11.06 Severability.....	62
11.07 Attorneys' Fees	62
11.08 References to Laws	62

LIST OF EXHIBITS

Exhibit A	Definitions
Exhibit B-1	Materials Recovery Operations Plan
Exhibit B-2	Materials Flow Diagram
Exhibit B-3	Food Waste Processing Plan and Pricing
Exhibit C	MSW Processing Lines Design Drawings
Exhibit D	Permits Necessary for Operation of Station
Exhibit E	Terms and Conditions in Use Permit Issued by City for Station
Exhibit F	Adopted Mitigation Measures in FEIR
Exhibit G	Hazardous Waste Exclusion Program
Exhibit H-1	Equipment to be Furnished by City
Exhibit H-2	Equipment to be Furnished by Contractor
Exhibit I-1	Minimum Staff Complement for Station
Exhibit I-2	Prevailing Wage Determination Letter
Exhibit I-3	Benefit Monetization Procedure
Exhibit J	Operating Procedures and Standards
Exhibit K	Source-Separated Recyclables Composition Survey Protocols
Exhibit L	SMART Radiation Monitoring SOP
Exhibit M	Volume-to-Weight Conversion Factors
Exhibit N-1	Procedure for Adjustment to Monthly Invoices for Publicly Hauled Waste Disposal Fees and Facility Use Fees
Exhibit O-1 - 13	Reporting Forms
Exhibit O-14	Minimum Software Capabilities
Exhibit P	Allocation of Revenues from Sale of Recycled Materials
Exhibit Q	Form of Performance Bond
Exhibit Q-1	Form of Continuation Certificate
Exhibit R	Procedures for Arbitration
Exhibit S	Method for Calculating Recycling Percentage
Exhibit T	Waste Characterization Protocols
Exhibit U	Plan of Office Building
Exhibit V-1	Environmental Procurement Policy
Exhibit V-2	Integrated Pest Control Policy
Exhibit W	Guaranty

**AGREEMENT FOR THE OPERATION
OF THE
SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION**

THIS AGREEMENT is made as of this _____ day of February, 2007,
by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter
referred to as the "City") and _____, a
_____ (hereinafter referred to as "Contractor").

RECITALS

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the California Integrated Waste Management Act of 1989, now codified at Public Resources Code Section 40000, *et seq.* (hereinafter referred to as the "Act"), directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal.

2. The City concurs in the aforementioned findings and declarations of the State of California.

3. City entered into an agreement with Waste Management of California, Inc., dated as of September 10, 1991 for long term disposal of solid waste (hereinafter referred to as "Disposal Contract"). The City of Mountain View and the City of Palo Alto (hereinafter collectively referred to as the "Neighboring Cities") also entered into companion agreements with Waste Management of California, Inc. (hereinafter referred to as the "Neighboring Cities' Disposal Contracts"). The Disposal Contract and the Neighboring Cities' Disposal Contracts all contemplate the initial delivery of Municipal Solid Waste from the City and the Neighboring Cities to a materials recovery and transfer station (hereinafter referred to as "Station") for processing, with only the residue which is not recycled then to be compacted and thereafter transported to and

disposed of at the Kirby Canyon Sanitary Landfill in San Jose, which is operated by Waste Management of California, Inc. The recycling operations conducted at the Station, which was constructed by the City, are integral and important components of the City's and the Neighboring Cities' strategies for implementing the Act and are incorporated into each city's Source Reduction and Recycling Element which, in turn, have been incorporated into the Santa Clara County Integrated Waste Management Plan.

4. Acting on its own behalf, and on behalf of the Neighboring Cities, City issued on _____, 2006, a Request for Proposals (hereinafter referred to as "RFP") seeking proposals from qualified firms to operate the Station and to receive and process Municipal Solid Waste and Recyclable Materials from the City and Neighboring Cities (which three (3) cities are hereinafter sometimes collectively referred to as the "Participating Agencies"). City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide operation of the Station (which entails processing materials for reuse and recycling, the marketing of such materials and the transport of nonrecycled waste materials for disposal) in a manner and on terms which are in the best interests of the Participating Agencies and their residents, taking into account the qualifications and experience of Contractor, the level of recycling to which the Contractor is committed, and the cost of providing such services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1. DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference.

DRAFT

ARTICLE 2. TERM OF AGREEMENT

2.01 Effective Date. The effective date of this Agreement shall be _____, 2007 ("Effective Date").

2.02 Term. The Term of the Agreement shall commence on the Effective Date and shall end at midnight on December 31, 2014, unless extended as provided in Section 2.03. Contractor's obligation to operate the Station shall commence January 1, 2008.

2.03 Option to Extend Term. The City may extend the Term of this Agreement for one (1) or more periods of three (3) months, up to a maximum of one (1) year, on the same terms and conditions. If City wishes to extend the Term it shall deliver a written notice to Contractor at least six (6) months before the expiration of the Term (i.e. on or before June 30, 2014) specifying the number of additional months by which it wishes to extend the Term. If the City initially elects to extend the term for less than twelve (12) months, it may subsequently elect to further extend the term in increments of three (3) months, up to a total of twelve (12) months, i.e. until December 31, 2015. If the City wishes to further extend the term in this fashion it shall deliver a written notice to contractor at least thirty (30) days prior to the expiration of the extended term.

2.04 Conditions to Effectiveness of Agreement. The obligation of the City to perform under this Agreement is subject to satisfaction, on or before the Effective Date, of each and every one (1) of the conditions set out below, which may be waived in whole or in part by City:

A. Accuracy of Representations. The representations and warranties made by Contractor in Article 8 of this Agreement shall be true and correct on and as of the Effective Date, and a certification to that effect dated as of the Effective Date shall be delivered by Contractor to City on the Effective Date.

B. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

C. Furnishing of Bond. Contractor has furnished the Performance Bond required by Section 7.03.

D. Furnishing of Guaranty. Contractor has furnished the Guaranty required by Section 10.23.

E. Effectiveness of City's Approval. The City's approval of this Agreement shall have become effective, pursuant to California law, on or before the Effective Date.

In the event that any condition set forth in this Section 2.04 is not satisfied or waived, by the Effective Date, by the City, this Agreement shall be void and shall have no further force or effect. City may waive the satisfaction of conditions described in Section 2.04, allow this Agreement to become effective, and exercise its rights and remedies under this Agreement for Contractor's failure to deliver the bond. Each party is obligated to perform in good faith the actions, if any, which this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

ARTICLE 3. OPERATION OF TRANSFER STATION

3.01 Receipt of Municipal Solid Waste and Recyclable Materials.

Commencing on January 1, 2008 and continuing throughout the Term, Contractor shall receive and accept (1) all Municipal Solid Waste ("MSW") and Source-Separated Recyclable Materials delivered to the Station by or on behalf of City, the other Participating Agencies and its or their Designated Haulers; (2) Publicly Hauled Waste generated within the City or within the jurisdiction of the other Participating Agencies; and (3) Source-Separated Recyclable Materials delivered by residents of or businesses operating within the City or within the other Participating Agencies.

Contractor shall process such materials for either Recycling or Disposal in accordance with this Agreement.

3.02 Priority. The basic and primary purpose of the Station is to process Municipal Solid Waste and Recyclable Materials delivered by the Participating Agencies and their respective Designated Haulers, who shall have first priority in use of the Station. A secondary purpose is to process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of the Station. If City allows, pursuant to Section 3.04, Municipal Solid Waste or Recyclable Materials generated outside the Participating Agencies to be delivered to and accepted for processing at the Station, such material shall be assigned third priority and Contractor shall operate the Station in order to give effect to the above stated priorities.

Processing of material from outside the Participating Agencies shall, if allowed, never be permitted to interfere with processing of Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, City may direct that materials from outside the Participating Agencies not be accepted during peak hours (10 a.m. to 2 p.m.) or when vehicles of Designated Haulers from any of the Participating Agencies are delayed entry beyond the times allowed in Section 3.12. Vehicles carrying materials from outside the Participating Agencies shall be refused entry during such periods.

3.03 Days and Hours of Operation. Contractor shall operate the Station, as specified in this Section, every day of the year except January 1, the fourth (4th) Thursday of November, and December 25 ("the holidays").

Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, the other Participating Agencies and their respective Designated Haulers at least twelve (12) hours per day, Monday through Friday and on Saturdays which occur in weeks containing a holiday which falls on a weekday. These minimum hours of full-scale operations shall be 5 a.m. to 5 p.m. On all other Saturdays the Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, other Participating Agencies and their respective Designated Haulers between the hours of 8 a.m. and 3 p.m.

Contractor shall operate the Station for the receipt and processing of Publicly Hauled Waste, and shall operate the buyback/drop-off center, from 8 a.m. to 5 p.m. every day, including Saturday and Sunday, except for the three (3) holidays. With forty-eight (48) hours' prior notice, Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from the City between 8 a.m. and 5 p.m. on Saturday and/or Sunday.

Contractor may operate the Station for processing of Municipal Solid Waste and Recyclable Materials and for delivery of Municipal Solid Waste to the Disposal Facility and of Recyclable Materials to market beyond the hours set forth above, provided that it complies with the limits on operation of equipment specified in the Conditional Use Permit (Exhibit E), including:

- trucks delivering refuse: 5 a.m. - 5 p.m.
- wood chipping equipment: 8 a.m. - 5 p.m.
- compactors: 7 a.m. - 10 p.m.

3.04 Receipt and Processing of Material from Extended Service Area.
City may at any time, and from time to time, require Contractor to receive and process Municipal Solid Waste and/or Recyclable Materials which originate in the Extended

Service Area. Unless and until City does so, Contractor shall not receive any Municipal Solid Waste or Recyclable Material from outside the Primary Service Area.

City has no obligation to Contractor to allow materials from outside the Primary Service Area to be delivered to the Station.

If City directs Contractor to receive and process Municipal Solid Waste from the Extended Service Area, either party may request that a waste characterization study of the Municipal Solid Waste from this area be conducted in accordance with the procedure described in Exhibit T, and City will arrange for such study to be conducted, with the expenses thereof paid equally by City and Contractor.

Promptly upon completion of the study, the parties will meet to consider: (1) whether the study shows a significant difference in composition of the Municipal Solid Waste from the Extended Service Area, as compared to that from within the Primary Service Area, and (2) if so, whether and to what extent there should be a change in the Minimum Recycling Level. If the parties are unable to agree on an appropriate change in the Minimum Recycling Level, the dispute may be submitted to binding arbitration pursuant to the procedures set out in Exhibit R.

3.05 Material Recovery Operations.

A. General. Contractor recognizes that City and the other Participating Agencies are committed to recycling waste materials which have in the past been disposed of in landfills. To that end, the Station has been designed and shall be operated to accomplish materials recovery in four (4) distinct operations which are summarized below in Subsections B, C, D, and E, described in Exhibit B-1, and illustrated in the material flow diagram attached as Exhibit B-2.

B. Processing of Municipal Solid Waste; Minimum Recycling Level

1. Municipal Solid Waste delivered by the Participating Agencies and their Designated Haulers, and Publicly Hauled Waste, shall be sorted to recover materials for Recycling including paper and other fibers, metals, wood, glass and plastic. Contractor shall Recycle not less than seventeen and one-half percent (17.5%) by weight of Municipal Solid Waste (including Publicly Hauled Waste)

delivered to the Station, which percentage is hereinafter referred to as the "Minimum Recycling Level." In addition, Contractor shall use all reasonable efforts to Recycle the maximum economically feasible amount. Contractor's performance in achieving the Minimum Recycling Level will be measured on a fiscal year basis. The Recycling Level achieved by Contractor will be calculated as shown on Exhibit P.

If Contractor fails to achieve the Minimum Recycling Level in any fiscal year, it shall pay City the sum obtained by multiplying the Disposal Fee per Ton in effect during such fiscal year by the difference, in Tons, between the number of Tons which, if Recycled, would have achieved the Minimum Recycling Level and the number of Tons actually Recycled.

The foregoing amounts shall be paid to City within thirty (30) days after the Recycling Level for the fiscal year has been calculated by City pursuant to Exhibit S. If not so paid, City may deduct the amount due from future payments to Contractor. Payment of the foregoing amounts does not cure the breach of contract represented by failure to achieve the Minimum Recycling Level and City retains its rights under Article 9.

C. Processing of Source-Separated Recyclable Materials. City and the other Participating Agencies operate various recycling programs including "curbside" recycling. Materials collected through these programs currently include glass, metal cans, scrap metals, plastic containers, corrugated cardboard, mixed paper, newsprint, residential used motor oil, and used oil filters. The Participating Agencies may change from time to time the type of materials collected.

Contractor shall process all Source Separated Recyclable Materials collected by City, by other Participating Agencies, by their respective Designated Haulers or by other persons under contract, which are delivered to the Station for marketing in accordance with Section 3.16. Recycling of these materials does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall be responsible for handling, storage and marketing of used motor oil. Contractor shall drain oil containers used by the Participating Agencies' curbside collection programs of all free-flowing residue and shall make

reusable emptied containers available to the operators of the curbside collection programs for reuse.

If City initiates collection of Source-Separated Food Waste, Contractor will process such materials for composting in the manner and for the price described in Exhibit B-3.

D. Processing of Source-Separated Yard Trimmings. Yard Trimmings are collected separately from residential customers by the City and the City of Mountain View. So long as either city continues to collect Yard Trimmings separately, they will continue to be delivered to the Station pursuant to Section 10.17.

Contractor will direct vehicles delivering Source-Separated Yard Trimmings to a specific processing area for removal of contaminants (such as large metal objects, dirt and rock), shredding, magnetic removal of small pieces of ferrous metal and separate bulk storage. Yard Trimmings and untreated wood (but not construction and demolition debris) removed from mixed loads through sorting on the MSW tipping floor will also be processed in the same manner.

Source-Separated Yard Trimmings may not be disposed of at a landfill nor may they be used for alternative daily cover or for any other "beneficial use" at a landfill without City's prior written approval. Source-Separated Yard Trimmings may be (1) composted at a permitted compost facility identified in Contractor's proposal or subsequently approved by City, and (2) with the City's prior written approval, used as fuel in a conventional biomass electrical generating facility.

Source Separated Yard Trimmings are included in the 280,000 Tons processing of which is covered by the Base Annual Payment provided in Section 5.02.B.

Composting, Transformation or Recycling of Source-Separated Yard Trimmings does not count toward Contractor's achievement of the Minimum Recycling Level.

City has no obligation to approve use of Source-Separated Yard Trimmings either as alternative daily cover or as fuel for a biomass facility.

E. Buyback/Dropoff Center. Contractor shall establish and operate a buyback/dropoff center within the Station. The purpose of the Buyback/Dropoff Center is to receive Source-Separated Recyclable Materials that are delivered to the Station by members of the public to process and then to market such materials.

The following materials will be accepted at the dropoff center:

- Newsprint
- Glass bottles, jars and other beverage containers
- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed paper
- Plastics (HDPE, PET)
- Used motor oil*
- Used automobile oil filters*
- Anti-freeze*
- Automobile batteries*
- Household batteries*
- Fluorescent light bulbs and tubes*
- Household items containing mercury (e.g., thermometers, thermostats)*
- Universal waste, electronic devices and consumer electronic devices.
- All containers for which a California Redemption Value ("CRV") is established now or during the Term.
- As directed by City, other materials that are accepted at other facilities similar to the Station and located in Alameda, San Mateo and Santa Clara Counties.

** From residential generators only.*

Contractor shall establish prices to be paid for materials accepted at the Buyback/Dropoff Center and shall maintain complete and accurate records of purchase transactions. Such prices shall be within ten percent (10%), plus or minus,

of the average prices paid for similar materials purchased in retail quantities from individual customers in similar facilities in Alameda, San Mateo and Santa Clara counties. These average prices will be established by a survey of these facilities conducted once a year by Contractor in July, with the results provided in a written report to City on or before July 31 of each year commencing July 2008.

City shall reimburse Contractor for a portion of the prices paid to users of the Buyback/Dropoff Center, the percentage to be equivalent to the City's percentage share of revenues from Recycled Materials sales, determined in accordance with Section 6.05 and Exhibit P. The reimbursement shall be effected by a credit against the amount due City from Contractor under Section 6.05.

Contractor shall provide, in the vicinity of the Buyback/Dropoff Center, a separate bin in which members of the public may deposit, without charge, Sharps. The bin shall be designed with a chute, such that materials deposited in the chute cannot thereafter be removed. Contractor shall arrange for disposal of Sharps at an appropriately permitted facility and shall inform City of the name and location of the facility to be used. City shall reimburse Contractor for the cost of proper disposal of Sharps.

Recycling of materials accepted at the Buyback/Dropoff Center does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall install and maintain signage at the Station giving members of the public appropriate information about the location and operation of the Buyback/Dropoff Center. The text of the signage shall be approved by City prior to its being installed.

3.06 Permits. City will obtain renewals of all operating permits and approvals from governmental agencies listed on Exhibit D.

If new operating permits and approvals (or amendments to the permits and approvals obtained by City) become necessary during the Term, by virtue of Contractor's operations, it will be the responsibility of Contractor to obtain them. City will assist the Contractor in obtaining them provided that the operations which give rise to the need for them are in compliance with this Agreement. Contractor shall

submit a draft of all applications for operating permits (and for subsequent renewals or modifications thereof) to the City for its review and approval prior to filing an application with the permitting agency. Contractor shall keep the City fully informed at all times on the status of all permit applications, including meetings with agency staff and hearings on permit applications before the agency's governing board. Contractor shall apply for permits in its own name or in the name of the City, as directed by the City. Contractor shall not agree to permit terms and conditions on any permit which is to be issued in the name of the City without the prior written consent of the City. Copies of all permits issued in Contractor's name and originals of all permits issued in the City's name (and any renewals or amendments) shall be delivered to the City promptly, and in any case within five (5) working days of their receipt by Contractor.

Contractor shall keep all licenses, permits and approvals governing the Station in force and shall comply with their terms, including any which may require improvements or modifications in operating procedures. Without limiting the generality of the foregoing, Contractor will comply with the terms and conditions contained in the Use Permit issued by the City for the Station, a copy of which is attached as Exhibit E.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit terms or its failure to obtain necessary permits.

3.07 Mitigation Measures. Contractor shall comply with and perform all of the mitigation measures identified in the FEIR which relate to the operation and maintenance by Contractor of the Station and transportation by Contractor of Municipal Solid Waste to the Disposal Facility, which were adopted by the City Council when the FEIR was certified and which are listed on Exhibit F.

3.08 Hazardous Waste. Contractor shall, upon commencement of operations at the Station, implement a Hazardous Waste Exclusion Program ("HWEP"), the minimum requirements for which are set out in Exhibit G, in a diligent, reasonable and non-discriminatory manner. If the California Integrated Waste Management Board or the California EPA require additional measures to be incorporated into the

HWEF, Contractor shall comply with such additional measures. Contractor shall temporarily store materials discovered through the HWEF (or otherwise) that cannot be processed at the Station or accepted at the Disposal Facility in the appropriate storage areas provided at the Station for this purpose. Contractor shall arrange and pay for the safe and lawful disposal of such waste, subject to reimbursement as provided in Section 5.05.

The operator of the Disposal Facility is required to conduct its own independent HWEF which will entail checking of loads delivered from the Station by Contractor. If the operator of the Disposal Facility rejects material delivered to the Disposal Facility under Section 3.06 of the Disposal Contract, Contractor shall remove and dispose of it in a safe and lawful manner, at its sole expense. Contractor shall also be solely responsible for reimbursing the Disposal Facility operator for costs of testing and disposal of waste which the Disposal Facility operator initially accepts but subsequently discovers may not be legally disposed of at the Disposal Facility, to the extent that such reimbursement is required by Section 3.06 of the Disposal Contract. To the extent Contractor must pay the Disposal Facility for the costs of disposing of such hazardous material due to the failure of transporters of Municipal Solid Waste to eliminate such materials prior to their delivery to the Station, Contractor shall be entitled to pursue whatever remedies, if any, it may have against such transporters, but shall not be entitled to reimbursement from City or the Participating Agencies.

Contractor shall remove and arrange for proper disposal of CFCs and compressor oils from appliances delivered to the Station, as well as switches containing mercury. The cost of removal and disposal is included in the Basic Annual Payment.

3.09 Equipment. City will provide the equipment listed on Exhibit H-1. Contractor shall provide all other equipment, sufficient in number and capacity to perform safely and efficiently the work required by this Agreement including but not limited to the equipment listed on Exhibit H-2. All equipment furnished by Contractor shall be new and unused as of January 2008, and suitable in design and construction for arduous, heavy-duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

The number of Transfer Vehicles and other equipment shown on Exhibit H-2 is based on throughput of Municipal Solid Waste at the level anticipated at the commencement of the Term. The parties recognize that volume may increase over time and that additional Transfer Vehicles and/or other equipment would be needed if and when it does. Contractor will acquire and operate such additional Transfer Vehicles and/or other equipment as needed to receive, process and transfer up to 1500 Tons per day, while continuing to meet performance standards required by this Agreement, and there shall be no increase in the Contractor's compensation provided in Article 5 as a result. All Transfer Vehicles must be capable of being loaded from either top or rear.

The City shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall, prior to February 1, 2008, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall record, or allow the City to record, such Statements and other documentation. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor.

Upon the City's exercise of its option to purchase, Contractor will sign and deliver bills of sale or other documents reasonably requested by City to evidence the transfer of title to all equipment purchased.

If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish, it shall request City's permission to do so and provide to City, for its approval, complete and accurate copies of all equipment leases which it proposes to enter into. The leases must provide that the lessor will, if requested, consent to their assignment to City without charge upon the expiration or earlier termination of this Agreement and must provide adequate mechanisms for the City to acquire title to equipment if desired.

3.10 Personnel.

A. Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Station and the transfer of Municipal Solid Waste to the Disposal Facility and Recyclable Materials to market) in a safe and efficient manner. The minimum complement of personnel staffing the Station shall be as shown on Exhibit I-1. The parties recognize that throughput rates may increase over time and that this increased volume could require additional personnel. The Contractor will add personnel as needed to operate the Station and achieve the Minimum Recycling Level, without any increase in the Contractor's compensation provided for in Article 5, provided that the annual amount of MSW and Yard Trimmings is not in excess of 280,000 Tons.

B. Contractor shall fill the positions required to perform the work required by this Agreement, in the job classifications listed in subsection D below, by first offering employment to those employees of the predecessor company operating the Station (1) who have been working continuously at the Station from July 1, 2007 in one or more of the listed job classifications, (2) who are eligible for employment under federal and state law, (3) who have not been convicted of a crime that is related to the job or job performance, and (4) who do not present a demonstrable danger to customers, co-workers or City employees.

C. If Contractor does not have enough positions available in the listed job classifications to offer employment to all of the predecessor contractor's employees who are eligible for employment under subparagraph B, the Contractor shall maintain a list of the predecessor contractor's employees who were not offered employment. If any positions become available during the first six (6) months of operation (i.e., from January 1, 2008 through June 30, 2008), Contractor shall offer employment to persons on the list by seniority within each job classification.

D. The job classifications covered by this section are drivers, sorters, mechanics, and operators. It does not apply to management, supervisory, administrative or clerical employees.

E. Upon commencement of operation of the Station on January 1, 2008, Contractor shall pay its drivers, sorters, mechanics and other employees working directly under this Agreement, and based at the Station, wages and benefits no less than the general prevailing rate of wages applicable to the work to be done, as determined by the Director of the California Department of Industrial Relations in a letter dated February 28, 2006, attached as Exhibit I-2, increased in each case by the same percentage that the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Area has increased between April 2004 (198.3) and April 2007. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the "total hourly rate" determined to be the prevailing wage, as shown on Exhibit I-2. The method by which benefits such as sick leave, vacation/holiday, and health insurance are monetized is shown on Exhibit I-3. The hourly rate in each category shall be increased each July by the same percentage that the Contractor's Base Annual Payment under Section 5.02 is increased.

F. If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor:

- (a) Provides all such workers compensation equal to that which this Section would require Contractor to pay if the workers had been hired as its own employees;
- (b) Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;
- (c) Maintains workers compensation and employer's liability insurance covering such workers in the amount required by Section 7.02.A.1 and with policies meeting the other requirements of Section 7.02.A.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are

thoroughly familiar with the work which Contractor is required to perform and the standards it is required to meet under this Agreement.

If workers provided by a particular independent contractor prove persistently unsatisfactory, City may require that Contractor either secure workers through a different independent contractor or hire qualified and competent employees directly. Contractor shall defend and indemnify City from and against any claim or suit filed by any independent contractor furnishing workers to Contractor.

3.11 Other Operating Procedures and Standards. In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of the California Integrated Waste Management Board currently in effect (as codified in Title 14 and Title 27 of the California Code of Regulations) and as they may be changed from time to time, and with the procedures and standards contained in Exhibit J.

3.12 Turnaround Time of Waste Collection Vehicles. Contractor shall operate the Station so that:

A. All vehicles of Participating Agencies and their Designated Haulers entering the Station are processed through the scale house weighing operation in no more than ninety (90) seconds per vehicle, measured from the vehicle's entry onto the scale;

B. All vehicles of Participating Agencies and their Designated Haulers are able to unload and depart from the Station in no more than fifteen (15) minutes from their leaving the scale house;

C. All vehicles carrying Publicly Hauled Waste do not wait an unreasonable amount of time at the scale house or for an assigned place to dump.

3.13 Weighing. Contractor shall operate and maintain the scale system at the Station. Weighing operations shall be conducted in accordance with standards and procedures set out on Exhibit J. City will provide four (4) scales at the Station

with digital instrumentation. Contractor shall furnish all hardware (including computers, cabling and terminals) and software (including memory) and all other items necessary to generate, at a minimum, all the reports contained in Exhibits O-1 through O-13. The software shall have the capabilities described in Exhibit O-14. The Contractor shall be solely responsible for operation of the computers and software.

Contractor shall provide City with licenses and all other documentation necessary or useful for City to operate the computers and software upon expiration or earlier termination of the Agreement.

Radiation monitoring equipment is used at the entrance to the Station to identify loads containing radioactive waste. Contractor will arrange for its employees to be trained in its use (training to be provided by City), and will operate the equipment and respond to alerts as described in Exhibit L without additional cost to City.

3.14 Collection of Public Use Fees. Contractor shall collect Public Use Fees established by the City from all Persons who use the Station other than the Participating Agencies and their Designated Haulers. Contractor shall keep complete and accurate records of all Public Use Fees collected, shall be responsible for the safekeeping of monies and negotiable instruments collected, and shall remit to the City (and the other Participating Agencies) all of such Public Use Fees collected, except the Gate Fee, provided in Section 5.04. The City shall have sole and exclusive authority to establish Public Use Fees and to modify them from time to time, provided that they will always be sufficient to generate at least the Gate Fee.

3.15 Cooperation Regarding Clean Up Campaign and Special Events. Contractor shall cooperate with all the Participating Agencies in providing free dumping weekends during Cleanup Campaigns and in use of "free dumping" coupons by residents of the Participating Agencies. Extra dumping weekends are currently held at the Station four (4) times per year, and cleanup campaigns by the City's franchised hauler occur in the spring and fall. Other neighborhood cleanup activities by the City's franchised hauler are held at various times during the year. Neighborhood cleanups use roll-off boxes which are dumped at the Station typically on

Saturdays. In addition, Contractor shall cooperate with City in other events, including periodic document shredding at the Station.

3.16 Marketing of Recyclable Materials.

A. Marketing Efforts. Contractor shall use its best efforts in marketing and promoting the sale of all Recyclable Materials. Contractor shall employ its best marketing strategy in effecting disposition of Recyclable Materials, and shall use its best efforts to obtain the best possible prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials from the Station as it does in marketing materials which it markets for its own account as Principal or as an agent/broker for any third party.

B. Marketing Plan. Contractor shall submit to City on or before January 1, 2008, and annually thereafter on or before January 1 of each following year, a plan for marketing of Recyclable Materials for the forthcoming year. The Marketing Plan shall include the following:

1. Quantities: estimated quantities of Recyclable Materials including but not limited to each of the following categories which Contractor expects to process for marketing during the year:

- Newsprint
- Glass bottles and jars
- Aluminum
- Metal cans
- White goods
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed papers
- Tires
- Plastics
- Used motor oil and oil filters
- Anti-freeze

2. Prices: estimated unit market values and total sales revenue for each category.

3. Marketing: advertising and sales promotion strategy and budget.

4. Review of quantities of materials marketed during the preceding year.

C. Marketing Duties. Contractor shall perform all of the following:

1. Storage. Contractor shall suitably store all Recyclable Materials to protect against fire, theft, deterioration, contamination or other damage. As provided in Section 7.02.A.4, Contractor shall insure all Recyclable Materials while in its possession, and during shipment prior to transfer of title, against fire, theft and other casualty losses. Contractor shall ship all Recycled Materials offsite for Recycling within ninety (90) days of their delivery to the Station unless stockpiling of specific Recyclable Materials on site longer than ninety (90) days is approved by City in advance, and in writing.

2. Certificate of End Use. Contractor will obtain a certification of end use from the purchaser establishing that the materials sold have been, in fact, recycled.

3. No Warranties. Contractor shall not make any warranties or representations regarding the Recyclable Materials other than those, if any, specifically authorized by the City to be made and will include in all sales contracts a disclaimer of warranties by City, if required to do so by City.

4. Delivery. Contractor will be responsible for effecting delivery to purchasers unless the terms of sale require the purchaser to arrange for delivery. In addition, Contractor upon request shall load processed Yard Trimmings onto vehicles of residents of the Participating Agencies, or of all members of the public if so directed by City. Such assistance shall be provided in accordance with a schedule approved by City, which shall provide for coverage at least three (3) days each week for a total of at least twelve (12) hours per week.

5. Disposition Costs When No Markets Exist. Due to market cycles and fluctuations, some or all of the recovered Recyclable Materials may have no, or negative, market value (i.e., an end user will accept the material for recycling but will charge a fee for doing so). When market conditions are such that some or all of the Recyclable Materials cannot be sold, Contractor must pay all transportation costs of delivering recovered Recyclable Materials to users willing to accept them, up to three hundred (300) miles (one way) from the Station. In addition, if users are willing to accept them only on condition of payment, Contractor shall pay up to \$44 per Ton to have such materials recycled. The \$44 per Ton cost shall be adjusted annually at the same time and by the same percentage used to adjust the Basic Annual Payment in Section 5.02.B.

The costs of disposition incurred by Contractor shall be allocated between Contractor and City on the same percentages used to allocate revenues received from the sale of Recyclable Materials pursuant to Section 5.06 and Exhibit P. (In other words, costs of disposition shall be netted against gross revenues prior to allocation of such revenues.) If costs of disposition or distances exceed the limits set forth above in this Section, Contractor may request City's approval, pursuant to Section 4.01, to dispose of unmarketable Recyclable Materials. If City grants such approval, Contractor shall transport to, and dispose of, the materials at the Disposal Facility. If during the three (3) immediately preceding calendar months taken in the aggregate, Contractor has achieved the Minimum Recycling Level, City shall pay the Disposal Fees, otherwise Contractor shall be responsible for, and shall pay, the Disposal Fees on such materials. If City instead directs Contractor to continue to arrange for the materials to be recycled, City shall reimburse Contractor for one hundred percent (100%) of the per ton cost incurred in their disposition, which are in excess of the disposition cost limit set forth above.

D. Title and Risk of Loss. Title to, and risk of loss of, Recyclable Materials shall be with Contractor upon delivery to the Station. Contractor shall keep the Recyclable Materials free from liens and other claims of Contractor's creditors.

E. Relationship of Parties. The parties to this Agreement intend and hereby agree that their relationship shall be that of independent contractors with

respect to the marketing of Recyclable Materials. Nothing contained herein shall be construed to create any employment, partnership, joint venture, co-ownership or agency relationship between the parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership or agency exists between the parties.

3.17 City's Right to Cure Defaults. In the event that Contractor fails to perform any of its obligations under this Article 3, and fails to commence and diligently prosecute such work within three (3) days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

3.18 City Use of Offices/Visitor Center.

A. Offices. City shall have exclusive use of approximately six hundred seventy-five (675) square feet of the office space, as shown on Exhibit U. In addition ten (10) parking spaces will be reserved for the exclusive use of City staff and invitees. Contractor shall provide, at no charge to City, utilities to this portion of the Office/Visitor Center building, including water, sewer, electrical power, heat and light, as well as janitorial and building maintenance services. City will provide, at its expense, telephones and other communications equipment, furniture, computers, office supplies and moveable partitions.

B. Other Areas. City shall have the right to make reasonable use of the common areas in the remainder of the building (e.g., the lobby, orientation room, lunch room, lockers/showers, and restrooms). City's use of these areas shall not interfere with Contractor's use, and the parties shall cooperate with each other in the scheduling of the use of the conference room and orientation room.

3.19 Source-Separated Recyclables Composition Survey. Contractor shall conduct, or assist City in the conduct of, a survey of the composition of Source-Separated Recyclable Materials delivered to the Station by the Designated Hauler of City and of Mountain View. The purpose of the survey is to determine the relative amounts of various types and grades of Source-Separated Recyclable Materials delivered from each jurisdiction for purposes of the MOU. Surveys will be conducted at the City's request no more frequently than once every six (6) months. The procedure for the survey, and the content of the report to be furnished within six (6) weeks after completion of the survey, are described in Exhibit K.

3.20 Cost Allocation Reports. No later than thirty (30) days after the end of each fiscal year, i.e., by July 30 of each year, Contractor shall deliver to City a report showing the distribution of all payments received from the City among the following operations:

- transfer
- materials recovery
- yard trimmings processing
- curbside recyclables
- public buyback/drop off

Contractor shall set forth the cost allocation method it used to calculate the distribution. In addition, if requested by City, it shall submit up to two (2) additional revenue distributions using alternative allocation assumptions provided by the City.

3.21 Modifications to MSW Processing Line. The City has plans to modify the MSW processing lines as shown in design drawings contained in Exhibit C, and supply the general equipment as shown in Exhibit H-1A. It is intended that this equipment be installed and operating prior to the commencement date of this Agreement. The tipping fee set forth in Section 5.02.A is based on the City having completed installation of the MSW processing lines substantially as described in Exhibit C, on or before January 1, 2008. If the MSW processing lines are not installed and operational by that date, then the Basic Annual Payment shall be _____ (in accordance with Proposal Form 13, "Existing MSW Processing Equipment") until such time that the new MSW processing equipment is installed and operational.